UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JAMES BAER	)	
	)	**Case No. 4:07cv396TIA**
Plaintiff,	)	
	)	
vs.	)	
	)	
CREATIVE PRODUCERS, INC.	)	
	)	
Defendant.	)	

DEFENDANT'S MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL DISCOVERY

Defendant, Creative Producers, Inc., by and through its attorneys of record, pursuant to Rule 37 of the Federal Rules of Civil Procedure, for its Memorandum in Support of Defendant's Motion to Compel Discovery, states as follows:

I. INTRODUCTION

Plaintiff, James Baer, filed his Complaint in this action on or about February 27, 2007, against Defendant Creative Producers, Inc. alleging that he was discriminated against by Defendant, due to his age, when he was terminated on January 30, 2006. (See, Plaintiff's Complaint, attached to Defendant's Motion to Compel as Exhibit "G").

Plaintiff claims that he was hired as the Director of Marketing and Business Development, with a primary duty to develop new sales leads with Fortune 500 companies and that as a result of his termination he has lost compensation, benefits of employment and funds expended to search for new work, together with "emotional distress, pain and suffering, embarrassment, humiliation and loss of enjoyment of life." (See, ***id.***).

On or about July 11, 2007, Defendant served its First Set of Interrogatories and First Set of Requests for Production of Documents to Plaintiff, James Baer. See, Defendant's Interrogatories Directed to Plaintiff, marked Exhibit "A" and Defendant's First Requests for Production of

Documents, marked Exhibit "B", attached to Defendant's Motion to Compel. Plaintiff thereafter served his Plaintiff's Answers to Interrogatories and Plaintiff's Response to Defendant's First Request for Production. (See, Exhibits "C" and "D", respectively, attached to Defendant's Motion to Compel).

Six (6) of Plaintiff's Answers to Interrogatories and two (2) of Plaintiff's Responses to the Request for Production are deficient. This Court should order Plaintiff to completely and properly respond to these discovery requests and no good cause exists for Plaintiff's failure to do so. Moreover, Plaintiff's incomplete answers are inexcusable.

In accordance with Local Rule 37-3.04, Defendant's counsel attempted to confer with counsel for Plaintiff to discuss, in good faith, Plaintiff's failure to adequately respond to the foregoing discovery requests, to no avail. (See August 13, 2007, letter and email correspondence from Defendant's counsel to Plaintiff's counsel, marked Exhibits "E" and "F", respectively, and attached to Defendant's Motion to Compel.)

II. ARGUMENT

A. This Court Should Order Plaintiff to Respond to All of Defendant's Written Discovery, Interrogatories and Requests, Because Plaintiff's Answers and Responses are Deficient.

Rule 33 of the Federal Rules of Civil Procedure provides, in relevant part:

> (b) Answers and Objections
>
> * * *
>
> (3) The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories.
>
> (4) All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the party's failure to object is excused by the court for good cause shown.

> (5) The party submitting the interrogatories may move for an order under Rule 37(a) with respect to any objection or other failure to answer an interrogatory.

F.R.C.P. 33.

Rule 34 of the Federal Rules of Civil Procedure provides in relevant part:

> (b) Procedure. ...The party upon whom the request is served shall serve a written response within 30 days after the service of the request. ...The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof.

F.R.C.P. 34.

Rule 37 of the Federal Rules of Civil Procedure provides in relevant part:

> (a) (3) Evasive or Incomplete Disclosure, Answer, or Response. For purposes of this subdivision an evasive or incomplete disclosure, answer, or response is to be treated as a failure to disclose, answer or respond.

Finally, Rule 26 of the Federal Rules of Civil Procedure provides, in part:

> Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. ...Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

F.R.C.P. 26(b)(1).

"Discovery requests should be considered relevant if there is **any** possibility that the information sought is relevant to any issue in the case and should ordinarily be allowed, **unless** it is clear that the information sought can have **no** possible bearing on the subject matter of the action." ***Scottsdale Ins. v. American Re-Insurance Co.***, 2007 WL 405870 at *2 (D.Neb. 2007)(emphasis added). "The burden of showing that the requested discovery is not relevant is on the party resisting discovery ...the party objecting to discovery must state with specificity how each request is not relevant or is unduly burdensome, overly broad or oppressive." ***In re Bell Atlantic Securities Litigation***, 1993 WL 514408 (E.D. Pa. 1993).

No objections to the written discovery was interposed by Plaintiff. Each of the interrogatories and requests for production submitted to Plaintiff, and to which Plaintiff has either failed to answer or respond or incompletely answered or responded, are relevant to his claim for discrimination against Defendant on the basis of his age. Plaintiff's failure to respond completely constitutes a failure to answer in accordance with F.R.C.P. 37(a)(3). The particular reasons each such interrogatory and request for production is relevant and should be completely answered are set forth in more detail in Defendant's Motion to Compel Discovery.

III. CONCLUSION

Plaintiff failed to respond to each of the written discovery items outlined in Defendant's Motion to Compel, constituting a failure to answer pursuant to Federal Rule of Civil Procedure 37(a)(3). Each is a relevant request and none have been objected to. Defendant respectfully requests that this Honorable Court enter an order compelling Plaintiff to provide complete answers and responses to Defendant's written discovery requests within ten (10) days, and for such further relief as this Court deems just and proper under the circumstances.

DANNA MCKITRICK, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on August 30th, 2007, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following:

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/s/ Laura Gerdes Long

166-58276: Creative Producers Group, Inc./Baer, James F.: 214175.wpd